

Before
FEDERAL COMMUNICATIONS COMMISSION
 Washington D.C. 20554

APR 22 1991
 Federal Communications Commission
 Office of the Secretary

In re)	
)	
Petition For Declaratory Ruling)	File No. MMB-910221A
That Lenders May Take A Limited)	
Security Interest In An FCC License)	

COMMENTS OF THE WIRELESS CABLE ASSOCIATION, INC.

The Wireless Cable Association, Inc. ("WCA"), by its attorneys, hereby submits its comments in response to the Petition for Declaratory Ruling submitted by Hogan & Hartson on February 21, 1991 (the "Petition").¹

The Petition requests the Commission to declare that a creditor may take a security interest in a FCC license, provided that such security interest: (a) leaves control of the license with the licensee, even following an event of default, unless and until the FCC has approved an assignment of the license to a new party; and (b) provides that, in the event of default, the license be put up for public or private sale together with the related assets in which a security interest is held. WCA vigorously urges the Commission to issue the declaratory ruling sought by the Petition.

As the trade association of the wireless cable industry, WCA and its members are vitally interested in reversing the Commission's long standing policy of barring any security interest in FCC licenses. Although the Petition focuses on Commission decisions

¹On March 15, 1991, the Commission released a Public Notice soliciting public comment on the Petition. These comments are submitted in response to that invitation.

that have barred the granting of security interests in broadcast licenses, those same decisions have subsequently been cited for the proposition that security interests cannot be granted in licenses issued for non-broadcast radio services. *See Omega Cellular Partners*, 5 FCC Rcd 7624 (1990). Thus, like broadcasters, wireless cable licensees of stations in the Multipoint Distribution Service and the Private Operational Fixed Microwave Service have been hampered in securing financing by the Commission's policy against the granting of security interests in licenses.

The need for financing in the wireless cable industry has never been as acute as it is today. With its recent *Report and Order* in General Docket No. 90-54, the Commission has taken great strides towards removing the regulatory barriers that had hampered the development of the wireless cable industry.² However, for many prospective wireless cable operators to take advantage of the new opportunities opened in General Docket No. 90-54 requires that financing to cover the high capital costs of transmission and reception equipment become more readily available.

While the regulatory environment still is far from ideal, and wireless cable operators are still suffering from an inability to secure all of the necessary programming on equitable terms and conditions, the single greatest problem facing the industry today is a lack of financing. Financing is rare and, when it is available, prospective wireless cable

²*See Amendment of Parts 21, 43, 74, 78, and 94 of the Commission's Rules Governing Use of the Frequencies in the 2.1 and 2.5 GHz Bands Affecting: Private Operational Fixed Microwave Service, Multipoint Distribution Service, Multichannel Multipoint Distribution Service, Instructional Television Fixed Service, and Cable Television Relay Service*, 5 FCC Rcd 6410 (1990).


operators are required to provide equity and/or outside collateral far in excess of that required by other business owners. Many simply cannot meet those additional requirements and, as a result, the growth of wireless cable has been stilted.

As the Petition correctly notes, the Commission's policy of barring even limited security interests of the sort addressed in the Petition is not required by law, serves no valid purpose and frustrates the development of service to the public by reducing the attraction of lending to radio-based service providers. Certainly, grant of the Petition alone will not solve the wireless industry's problems. However, permitting lenders to obtain security interests in the non-broadcast licenses held by wireless cable operators can be expected to open some financing opportunities that were formerly closed to wireless cable systems and thereby advance the Commission's efforts to introduce competition to the coaxial cable industry.

WHEREFORE, for the foregoing reasons, the Commission should declare that limited security interests in FCC licenses are permissible under the circumstances detailed in the Petition.

Respectfully submitted,

THE WIRELESS CABLE
ASSOCIATION, INC.

By: 
Paul J. Sinderbrand

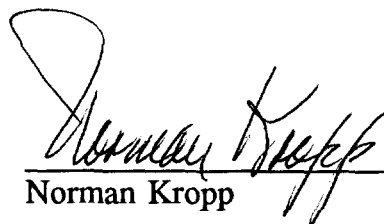
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April 22, 1991

CERTIFICATE OF SERVICE

I, Norman Kropp, hereby certify that the foregoing "Comments of The Wireless Cable Association, Inc." was served this 22nd day of April, 1991 by depositing a true copy thereof, first class postage prepaid, with the United States Postal Service addressed to:

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Norman Kropp